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Attorneys for U.S. Bank National Association, as Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

1427 43 ST LLC,

Debtor.

Chapter 11

Case No. 23-41160-nhl

**AFFIRMATION OF MORGAN C.
FIANDER IN SUPPORT OF ORDER TO
SHOW CAUSE TO KEEP THE
RECEIVER IN POSSESSION OF THE
PROPERTY PENDING HEARING ON
THE RECEIVER POSSESSION MOTION**

MORGAN C. FIANDER, Esq., an attorney duly admitted to practice in this Court, pursuant to 28 U.S.C. § 1746 and under penalties of perjury, declares that the following is true and correct:

1. I am an associate with Polsinelli PC, attorneys for secured creditor U.S. Bank National Association, as trustee for the registered Holders of Wells Fargo Commercial Mortgage Securities, Inc. Multifamily Mortgage Pass Through Certificates, Series 2018-SB51 (“**Lender**”). I make this Affirmation in Support of Lender’s Emergency Motion by Order to Show Cause (the “**Emergency Motion**”) seeking an Order keeping the Receiver in possession of the Property and directing the Debtor to refrain from further interference pending a full hearing on Lender’s Receiver Possession Motion (defined below). I am familiar with the facts and events described

herein by way of my representation of Lender in this action and by my review of the files kept by my firm in the course of its representation of Lender.

2. On April 28, 2023, Lender filed a Motion for an Order Authorizing Custodian to Remain in Possession of Property of the Estate under Bankruptcy Code Section 543(d) (the “**Receiver Possession Motion**”). The Receiver Possession Motion is noticed to be heard on June 6, 2023, as this was the soonest date available on the Court’s website.

3. On May 2, 2023, a hearing was held in this matter on Debtor’s Motion to Jointly Administer, Motion to Extend Time to File Schedules, and presentment of an Order to Employ Debtor’s Counsel. [Dkt. 13, 14, 17, 18.] I appeared on behalf of Lender.

4. The Receiver Possession Motion was not substantively discussed, argued, or ruled on at the May 2 hearing, and no order directing any interim turnover was or has been issued.

5. On May 4, 2023, Lender became aware that Debtor and its agents were directing tenants at the Property to attorn to Debtor, and that the receivership was no longer in place or effective. Lender brought this issue to Debtor’s counsel’s attention, who confirmed that was in fact what was happening, and insinuated that the Court had actually ordered turnover. That of course is not my recollection from the hearing, nor is there any order to that effect. Further, as described in the Motion, such an order would be premature and improper as unfairly divesting Lender of its right to be heard on the Receiver Possession Motion.

6. Due to the confusion and chaos caused by Debtor’s actions, supported and possibly even directed by Debtor’s counsel, Lender is moving via order to show cause to obtain an order maintaining the status quo, i.e. temporarily permitting the Receiver to remain in possession of the Property, pending full hearing on the Receiver Possession Motion on June 6, 2023, and further

directing the Debtor and its agents to refrain from interfering with the Receiver's possession of the Property.

7. Emergent relief is necessary here given the Debtor's attempts to take the Property from the Receiver, which would, again, unfairly divest the Receiver from the Property and entirely moot Lender's Receiver Possession Motion before Lender and the Receiver have had the full and fair opportunity to be heard on same.

8. Attached hereto as **Exhibit A** is a true and correct copy of an email chain between my office, Debtor's counsel, the Receiver's team, and a tenant at the Property, from May 2, 2023 through May 4, 2023.

9. No prior application for the relief requested herein has been made.

Dated: May 5, 2023
New York, New York

Respectfully submitted,

By: /s/ Morgan C. Fiander
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